In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1049

OMAN CONSTRUCTION CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

In 1963, the court of appeals, pursuant to the Board's petition under Section 10(e) of the National Labor Relations Act, sustained the Board's finding that petitioner, Oman Construction Co., had discriminated against employee William Nelson in violation of the National Labor Relations Act and enforced its order requiring that Nelson be reinstated with back pay. *National Labor Relations Board* v. *Oman Construction Co., Inc.*, 316 F. 2d 230, enforcing 137 NLRB 111. In accordance with the Board's practice, however, the Board's original order, while determining Nelson's right to back pay, did not fix the specific

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amount due. Since the parties were unable to reach agreement on this issue after the court of appeals decision, the Board conducted a supplemental hearing to determine the amount of back pay due.[1] On November 13, 1963, the Board issued its Supplemental Decision and Order awarding Nelson $4,772. 144 NLRB 1534. Petitioner refused to comply with this award, whereupon the Board moved the court of appeals for entry of a supplemental decree requiring petitioner to pay the sum determined by the Board in its Supplemental Decision and Order. The court of appeals granted enforcement of this order (Pet. A1–A3).

Petitioner's sole contention (Pet. 4, 8) is that the court of appeals lost the power to enter a decree enforcing the Board's specific back pay award because, in enforcing the Board's original order, the court failed to remand the case to the Board for the computation of the specific amount of back pay due. This contention is insubstantial. The court necessarily retained jurisdiction to enforce any supplementary Board order that was necessary to effectuate the original Board order which it had enforced; in addition, the specific back pay award was itself an order which the court had jurisdiction to enforce under Section 10(e) of the Act. Thus the courts of appeals have uniformly held that, upon enforcement of a Board back pay order entered in general terms, the Board may, "without further direction" from the court, conduct

[1] The procedure for such supplemental proceedings is set forth in the Board's Rules. See 29 C.F.R. § 102.52, *ff*.

proceedings to determine the amount of back pay due under the general order previously enforced by the court, and may then seek a supplemental decree from the court requiring the payment of that amount. *Home Beneficial Life Insurance Co.* v. *National Labor Relations Board*, 172 F. 2d 62 (C.A. 4); *National Labor Relations Board* v. *Bird Machine Co.*, 174 F. 2d 404, 405–406 (C.A. 1); *National Labor Relations Board* v. *Royal Palm Ice Co.*, 201 F. 2d 667, 668 (C.A. 5); see *National Labor Relations Board* v. *N.Y. Merchandise Co.*, 134 F. 2d 949, 951 (C.A. 2). See, also, *National Labor Relations Board* v. *Deena Artware, Inc.*, 361 U.S. 398, 411 (concurring opinion).[2]

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[2] As noted by the court of appeals (Pet. A2–A3), the cases relied upon by petitioner (Pet. 7–9) are inapposite. *National Labor Relations Board* v. *Deena Artware, Inc.*, 207 F. 2d 798 (C.A. 6), dealt only with the question of whether the court would issue an order restraining the employer from assigning assets to creditors before back pay had been computed. Indeed, the court in that case, although denying the restraining order, did subsequently enforce a supplemental back pay order similar to the order here (*National Labor Relations Board* v. *Deena Artware, Inc.*, 228 F. 2d 871). *Retail Clerks International Association* v. *Schermerhorn*, 375 U.S. 96, dealt with the wholly unrelated issue of the power of state courts to enforce state "right-to-work" laws, and *National Labor Relations Board* v. *Hudson Motor Car Co.*, 136 F. 2d 385 (C.A. 6), involved the construction of an ambiguous back pay order.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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